

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

COREY L. HARRIS, et al)	CA 04-281 ERIE
Plaintiffs)	
)	
v.)	JUDGE SEAN J. McLAUGHLIN/
)	MAGISTRATE JUDGE SUSAN
GREATER ERIE COMMUNITY ACTION)	PARADISE BAXTER
COMMITTEE, et al.,)	
Defendants)	Electronically Filed

**BRIEF IN SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

Defendant S.P. Black & Associates, by its attorneys, MacDonald, Illig, Jones & Britton LLP, files this Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

I. Question Presented

WHETHER PLAINTIFF'S AMENDED COMPLAINT FAILS TO
STATE A CLAIM AGAINST DEFENDANT S.P. BLACK &
ASSOCIATES AND THUS SHOULD BE DISMISSED AS TO
THAT DEFENDANT?

II. Statement of the Case

Pro se plaintiff Corey L. Harris filed a Complaint against defendant S.P. Black & Associates and others on December 22, 2004. Subsequently, he filed a Motion to Amend

Complaint, which this Court granted on July 28, 2005.¹ In Paragraph 5 of his original Complaint, plaintiff alleges that:

Defendant (S.P. Black & Associates), using 9/11/01 as an excuse, made it impossible for Plaintiff's transportation service, CH Services Provider, to operate 24/7 to and from work transportation to accommodate accessible and affordable transportation to the inner city community.

While plaintiff does not allege what it was that defendant S.P. Black & Associates did to preclude him from operating his business, it is believed that the gist of plaintiff's claim relates to a premium quote for commercial automobile insurance that defendant S.P. Black & Associates provided to plaintiff on or about January 21, 2002. (A copy of said quote, which appears as Exhibit 11 to plaintiff's Petition to Amend Complaint, is attached to defendant's Motion to Dismiss Plaintiff's Amended Complaint as Exhibit A). Although plaintiff implies that the quote was unreasonably high, nowhere in his Amended Complaint does he allege that defendant S.P. Black & Associates discriminated against him on any basis in providing the quote. Nor does he allege that S.P. Black & Associates precluded him from seeking coverage from another agency.

Defendant S.P. Black & Associates now moves to dismiss plaintiff's Amended Complaint on the grounds that it fails to state a cause of action upon which relief can be granted.

III. Standard of Review

The applicable standard of review for a motion to dismiss brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure "requires the court to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in a light most favorable to the non-moving party." *Rocks v. City of Philadelphia*, 868 F.2d

¹ For purposes of this Motion, it is assumed that plaintiff intended to incorporate the allegations of his initial Complaint into his Amended Complaint.

644, 645 (3d Cir. 1989). While the court must accept as true all factual allegations in the complaint, it "need not accept as true 'unsupported conclusions and unwarranted inferences.'" *Doug v. Grant Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173, 183-84 (3d Cir. 2000) (quoting *City of Pittsburgh v. West Penn Power Co.*, 147 F.3d 256, 263 n. 13 (3d Cir. 1998)). The question before the court is whether the plaintiff has alleged sufficient facts, that if proven, support a claim that would entitle the plaintiff to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

IV. Argument

PLAINTIFF'S AMENDED COMPLAINT FAILS TO STATE A CLAIM AGAINST DEFENDANT S.P. BLACK & ASSOCIATES AND THUS SHOULD BE DISMISSED AS TO THAT DEFENDANT.

Plaintiff claims that defendant S.P. Black & Associates effectively precluded him from operating his transportation business by providing him an unreasonably high quote on commercial automobile insurance coverage. Plaintiff, however, does not allege that defendant S.P. Black & Associates discriminated against him on any basis or that it precluded him from seeking insurance coverage through another agency. The only statutes and/or legal theories that plaintiff cites in support of his claim are the "Corporation Act" and the "Poverty Level Act", neither of which exist. Because plaintiff's factual allegations, even if true, fail to support a claim that would entitle him to relief, his Amended Complaint should be dismissed as to defendant S.P. Black & Associates pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

V. Conclusion

Plaintiff's Amended Complaint should be dismissed as to defendant S.P. Black & Associates because it fails to state a claim upon which relief can be granted.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on September 7, 2005.

s/ Matthew W. Fuchs

s/ Matthew W. Fuchs

Matthew W. Fuchs

PA I.D. 89767

MacDONALD, ILLIG, JONES & BRITTON LLP

100 State Street, Suite 700

Erie, Pennsylvania 16507-1459

Phone (814) 870-7612

Fax (814) 454-4647

mfuchs@mijb.com

Attorneys for Defendant

S.P. Black & Associates

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